

## State Statutes Idaho Contractor Registration Act

**54-5204. Registration required.** (1) On and after January 1, 2006, it shall be unlawful for any person to engage in the business of, or hold himself out as, a contractor within this state without being registered as required in this chapter.

(2) It shall be unlawful for a contractor to engage any other contractor who is required by this chapter to be registered as a contractor unless such other contractor furnishes satisfactory proof to the contractor that he is duly registered under the provisions of this chapter.

**54-5205. Exemptions from registration.** (2) In addition to the exemption set forth in subsection (1) of this section, registration as provided for in this chapter shall not be required for the following, so long as such person is not acting with the intent to evade this chapter and so long as such person does not hold himself out as a registered contractor:

- (a) A person who only performs labor or services for wages or a salary as an employee of a contractor...

**54-5203. Definitions.** As used in this chapter:

(3) "Construction" means the performance of building, altering, repairing, adding to, subtracting from, improving, reconstructing, moving, excavating, wrecking or demolishing any building, highway, road, bridge, or other structure, project, development or improvement to real property, or to do any part thereof, including the erection of scaffolding or other structures or works in connection therewith.

(4) "Contractor" means:

(a) Any person who in any capacity undertakes, offers to undertake, purports to have the capacity to undertake, or submits a bid to, or does himself or by or through others, perform construction; or

(b) A construction manager who performs construction management services.

## Construction and Independent Contractors

IDAHO  
DEPT. OF LABOR

### EMPLOYEE OR INDEPENDENT CONTRACTOR?

#### WHAT YOU NEED TO KNOW

Workers are presumed to be employees UNLESS they meet a specific exemption provided by law.

There is no such thing as a 1099 employer.

It is not the employer's choice to issue 1099s or W-2s based on economics or convenience.

Misclassifying your workers to gain a competitive advantage over your competition is against the law.

*An employer cannot compel a worker to be independent by requiring the worker to get a liability insurance policy, worker's compensation policy, contractor's registration and / or register as a limited liability company just so they can treat the worker as an independent contractor for tax purposes.*

**Two criteria** must be met for a worker to be an independent contractor:

1. Worker must be free from the right of direction or control in performing work — under contract of service and in fact.
2. Worker must be engaged in an independently established trade, occupation, profession or business.

*Idaho Code Section 72-1316(4)*

## DO YOU HAVE EMPLOYEES OR INDEPENDENT CONTRACTORS?

### SUGGESTIVE OF EMPLOYEE

**You**, or someone working for you, train and/or supervise the work or reserve the right to supervise the worker.

The work being performed is **not** that of a skilled professional such as a CPA, attorney, licensed electrician or licensed plumber, and training can be done on the job.

You dictate how the work is done. You tell the individual when to work, and you evaluate the worker's performance.

You guarantee the work and you are financially and legally responsible for that individual's work.

You find the jobs and enter into the contracts; employees show up and do the work.

The worker performs the same or similar services as your company does.

You provide the heavy equipment, power tools and scaffolding.

You placed a help wanted, Craigslist or other similar ad to find worker.

Your relationship with the workers is on-going, has no definitive start/end dates and/or is not based on the completion of a single project.

You bear all the risk and opportunity. Employees get paid if they show up and work; they don't get paid if they don't show up or don't work.

### SUGGESTIVE OF INDEPENDENT CONTRACTOR

Independent contractors are trained professional in the industry and don't need you to show them how to do the job.

Independent contractors have specialized skills that you do not possess, which is why you hire them.

Independent contractors decide when and what tools, methods and approach are used for a project. **You**, their customer, are only concerned with the end product.

Independent contractors cover any costs associated with poor or incomplete work. They are in breach of contract if they fail to complete the work.

Independent contractors actively bid jobs to get more work.

Independent contractors have a business-to-business relationship with you.

Independent contractors have significant investment in their business, which may include such things as heavy equipment, trucks and more.

Independent contractors advertise their services in some way so their customers can find and reach them.

Independent contractors are in business for themselves and have a multitude of customers. They come in, get the job done, get out and move on to their next customer.

Independent contractors have an opportunity for profit and loss. If they engage in smart business practices, they can realize increased profits.

All of the factors are viewed in total. There isn't one factor that wins over the other to rule a worker an employee or an independent contractor. It is the overall working relationship that is examined to make a fair assessment of each worker's situation. If you are still not sure after reading this information, please contact a tax specialist to help you in your analysis.

Failure to make the correct determination can cost your business both tax and penalty assessments that far exceed the original tax that would have otherwise been due if your workers meet the definition of an employee and you would have complied with the law in the first place.